

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

COMMITTEE ON AGRICULTURE
January 18, 2005
LB 20, 52, 222, 51

The Committee on Agriculture met at 1:30 p.m. on Tuesday, January 18, 2005, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 20, LB 52, LB 222, and LB 51. Senators present: Bob Kremer, Chairperson; Philip Erdman, Vice Chairperson; Carroll Burling; Doug Cunningham; Don Preister; and Roger Wehrbein. Senators absent: Ernie Chambers and Deb Fischer.

SENATOR KREMER: If you would, we'd ask you to take your seats. We will begin the hearing for today.

SENATOR ERDMAN: Are you ready?

SENATOR KREMER: Ready to go? Okay. We want to welcome you to the first hearing of the Ag Committee and all the other committees, the ones that meet on Tuesday anyway. It's the first day of hearings. Nebraska is kind of unique in that we have every bill, it has a public hearing, so that's where we're starting today. First of all I would like to introduce the members of the committee and staff that are present. Committee clerk clear to my far right is our committee clerk, Jessica Shelburn, she is...it's her first run at being a committee clerk, so she'll do a great job, I know, so welcome. Senator Chambers, I believe, is not going to be with us today and maybe Senator Preister will join us later. Rick Leonard is our research analyst for the Ag Committee, he's the guy that does all the work. My name is Bob Kremer, Chairman; Senator Erdman, from Bayard, is the Vice Chairman of the committee; Senator Doug Cunningham, from Wausa; Senator Burling, from Kenesaw; Senator Wehrbein, from Plattsmouth; and I think Senator Fischer had a death in the family, something, and she could not be here today either, so we're short a few members. A few instructions: we ask you to turn off your cell phones so they are not disruptive; and I don't think we will have to admonish the group today, but we ask no show of verbal support or booing or hissing; but then I think you're all going to be pretty ruly. Please, when you want to testify, come up and fill out the sign-in sheet. While somebody's testifying, the next person that's going to testify come up and do that, that would just keep things moving a little faster then. Senator Preister has joined us from, he's from Omaha. I

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 2

LB 20

think that's all the committee. Please keep your comments on line and brief. If somebody has stated something already, you don't have to repeat everything. We don't care if it's nice and short. Can you think of anything else that I need to do?

RICK LEONARD: Mention the order of the bills for today.

SENATOR KREMER: Oh, okay. We have four bills today: LB 20, is number one on the list, LB 52, LB 222, and LB 51. And I will be introducing the first bill, LB 20, so I will sit at...turn the meeting over to our Vice Chairman, Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. Chairman. We're ready whenever you are, take your time. It can be very intimidating before the Ag Committee. Also, if you wish to testify, know that there's not as many willing to testify today, but if you could be prepared and try to move up to one of the first rows, that would help us in moving our hearing along.

LB 20

SENATOR KREMER: Thank you, Senator Erdman. And my name is Bob Kremer, K-r-e-m-e-r. I represent the 34th District and I'm here to introduce LB 20. LB 20 is a bill that clarifies the duties and the liabilities imposed on landowners and the Nebraska Brand Committee under the Nebraska Livestock Brand Act, and the law for estrays and trespassing animals that do not apply in the case of feral swine. Feral swine are defined as swine that are obviously reverted to wild state, and freely roaming swine having no clear markings or other identification that they are escaped from a managed swine herd, so it defines what a feral swine is and it excludes that from the brand act. It's the intent of the bill to remove any ambiguity whether landowners have feral swine present on their property, they may have them destroyed or removed without incurring the liabilities of any person. The bill does not provide that feral swine may be destroyed...or does provide that feral swine may be destroyed in accordance with 37-524 of the Nebraska Game Law. LB 20 has been introduced in a companion measure with LB 29, which has been introduced in the...will be introduced

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 3

LB 20

tomorrow, I believe, in the Natural Resources Committee that will assist the Games and Parks Commission in implementing the strategies to eliminate feral swine from Nebraska. So with a combined, these two bills which may be combined when we get on the floor, it's understood that feral swine has no owner, as so there will be no one there that would be liable. I did get some information on feral swine and I think there are about 2 million head in the United States right now. And two distinguishing things about feral swine is that they reproduce fairly quickly and are very hardy and withstand about anything, but they also spread a lot of diseases. There have been about five known diseases that have spread and causes a lot of damage to wildlife and habitat. In some pictures, they even really get out in cornfields and do a lot of damage to agriculture and the crops and that. So we did have a bill in Natural Resources, I think last year or the year before, saying that somebody cannot have...a sportsman group cannot have these wild pigs in order to be hunted because all states it seems like are coming forward with trying to eradicate the feral swine, which is becoming a real problem. With that, I will answer any questions that you might have and I think some of the testifiers can explain it better than I did.

SENATOR ERDMAN: Thank you, Mr. Chairman. Any questions for Senator Kremer? Senator Preister.

SENATOR PREISTER: Senator Kremer, who had the responsibility of counting those 2 million hogs?

SENATOR KREMER: I don't know who did that, so. I did not.

SENATOR ERDMAN: While they were counting them, why didn't they just pick them up, right? Are there other questions for Senator Kremer?

SENATOR KREMER: Under the brand act any other estray animals has a certain procedure that they go through and try to identify an owner, what they are able to do if they cannot find the owner, so this removes that from the list.

SENATOR ERDMAN: Okay. Seeing no further questions, we'll ask for our first testifier in support for proponent. And if you will make sure that you fill out the sign-in sheet and identify yourself and if you would spell your name for

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 4

LB 20

us, that would help with the transcriber's job of making sure you're part of legislative history.

MARK BROHMAN: (Exhibits 1-5) Thank you, Mr. Chairman and members. My name is Mark Brohman, for the record that's B-r-o-h-m-a-n. I'm here today representing the Nebraska Game and Parks Commission and we would like to thank Senator Kremer for bringing this bill forward. It was a bill or an idea that we came up with, and like he said, there is a companion bill, LB 29, that will be heard tomorrow on the Natural Resources that clarifies that Game and Parks has the authority to kill those feral swine or to authorize agents. And the purpose of that is, of course, we've got a landowner who knows he has feral pigs out there, we're going to authorize them to shoot the pigs. We don't want it to turn into a shooting affair where it becomes popular and they want to use...leave a few out there for seed so they can have more pigs, that's the last thing we want to do. So we do want to keep this fairly restricted, but this bill takes it out of the estray laws and the trespass. To clarify, we had some pigs down in Richardson County, this past year, and that was really one of the major reasons we passed legislation, that was a year ago, that outlawed the sport-hunting of hogs in Nebraska. We only had one individual or farm-game operator that was currently having hog hunts and they were getting out and causing problems and so we wanted to get on top of it. The states around us said the best thing you can do is to eliminate it before it gets started. So we did pass that law and this is kind of a clarification of that law. What was happening was we had some pigs loose down there, we authorized or we told the county sheriff, and the sheriffs...the deputy sheriffs that they could kill them on sight. And they said, well, we don't want to do that because of the estray laws under the Livestock Brand Act. We don't want to get crosswise with that. If we kill someone's hog, even if it is a feral hog, and someone claims ownership, we'd have to pay them for it. We don't want the liability. So that's primarily why we come up with this part of the bill. LB 29 in Natural Resources will allow us to authorize agents: meaning wildlife damage control officers, through the USDA; individual landowners; our agents; our staff. I've got a couple things I'll pass out. The first thing is a brochure on wild pigs in Nebraska. And this is a brochure that has a lot of good information in it, it's something that will be

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 5

LB 20

out, probably next week. And hopefully by the time this goes to the floor, we'll have the glossy, nice photos, but you can take a look at that. And I've got a couple other handouts that I will also pass around. I'll keep the page busy here. The next one is a, has some pictures, colored photos of damage done in other states and the bottom two photos are actually Nebraska. And then they have got comments from other states around the nation, the kind of damage that pigs can inflict. And then I have got a couple handouts here on the growing population of feral pigs. On one side is, in 1981, they were basically in the lower tier of states, and then in '91 they came up with a whole other belt of states, the next tier higher. So that's for your reference. And then I'll go ahead and let him take all, all these handouts at once, there's four there total. The next one shows diseases in the states that they have been present in: swine brucellosis and pseudorabies, fortunately for us, they're in the southern states right now. Other diseases are included: tuberculosis, bubonic plague, hog cholera, foot and mouth disease, and anthrax. So they can cause a fairly serious threat to our local domestic stock. And I think the pork producers here today, and I don't know if they will be testifying, but they support us as well as the Ag Department, the Department of Ag. The last handout I have is a growth curve on one side and it's kind of a poor photo, but it shows you how fast they can reproduce. And in five years, if you have a small herd, in five years you can have 25 animals. They can reproduce, have two litters a year up to 12, they average 6, but they have a fairly steep growth curve. And on the back, compares them to white-tailed deer. You can see on the bar graph there, when it comes around, white-tailed deer don't reproduce very fast compared to wild pigs. And so in a matter of a few years, a couple loose pigs can really cause problems. We thought we only had pigs in one location in Nebraska, we actually have them in three locations currently. We have got them in Richardson County, which we believe are escapees from the operation we talked about, or I talked about a minute ago; around Harlan County Reservoir, in Harlan County we think those are pigs that came up from Kansas from other feral pigs that have been feral for a number of years; and then out in Seward County, we recently last year came up with some pigs out there, and they have reproduced fairly rapidly. We've been trapping, shooting, doing a number of things out there, trying to get rid of them. But they are

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 6

LB 20

very difficult, that terrain is very rough, a lot of cedar trees. They have turned nocturnal, which means they go out at night and forage, so in the day we can't even spot them from helicopters or go out and try to hunt them. And they are very smart, pigs are one of the...swine are one of the smartest animals after chimps and dogs and porpoises, and a few of those species. Pigs are right in there in that next category of intelligence, so they learn very quickly and adapt. So we have got that population out in Seward County. We think those probably came from a domestic herd, a few that got loose and have reproduced and so those are what we call true feral pigs, that came from immediate domestic stock versus a wild boar, Eurasian wild boar, that originally came over from Europe and they were brought in for hunting in the southwest. So anyway, with that I will end my testimony and take any questions. But we do have three distinct populations right now and we want to get ahead of them, before they cause any more trouble because they have caused some severe crop depredation, there's always the disease threat, and so we do want to get on top of it.

SENATOR ERDMAN: Thank you, Mark. Are there any questions?
Senator Wehrbein.

SENATOR WEHRBEIN: How are you supposed to dispose of them, will rendering companies take them?

MARK BROHMAN: Yes, yeah they will. And in some of the cases on our wildlife management areas, we actually leave them out there for the coyotes to feed off of. But, if you have got several of them, we wouldn't want to pile them up and make a large, you know, pile. But that's what we are currently doing, is we are disposing of them on our property, and, of course, coyotes and magpies and crows clean them up pretty quickly.

SENATOR WEHRBEIN: Does that spread the disease?

MARK BROHMAN: We don't think so at this point. We are not aware of any diseases, the population that's in Nebraska now has. We are just wanting to stay on top of it. Those are just my copies, thank you. So we want to hopefully not get any of those diseases that I mentioned, but they could come in at any time and, of course, spreading would be fairly

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 7

LB 20

easily, or readily with a wild population versus a, you know, a controlled domestic herd.

SENATOR ERDMAN: Are there any further questions? Senator Preister.

SENATOR PREISTER: Can't some of that meat be used in some of the shelters or places where people could benefit rather than it just being disposed of?

MARK BROHMAN: We have had that discussion, some of our biologists thought, you know, boy it would make a really nice pig roast. But the last thing we wanted to do was, in that instance, we didn't want to make sure that someone didn't say, well, it looks like Game and Parks out there hunting to have a barbecue. As far as the shelters, with the chronic wasting disease in deer, lately, some of the shelters and groups that our hunters have donated to, in the past, have become a little leery of wild game. If the numbers get to the point where we are killing a lot. Right now, we have only got a few individuals, you know, we have shot a few, four or five out at Seward County, a couple have been killed by roadkill down at Richardson County, which of course we didn't know how long they had been there dead, which we wouldn't want to try to, you know, use those. And in Harlan County, I think the federal agents have shot a couple. It's something we have talked about, Senator, and I'll take that back to, you know, my biologist and see if there's not a way that we might be able to make better use of that meat. Because if we go out and are fairly successful and get two or three at one time, right now it's been fairly sporadic. They have been really tricky, difficult to get. But that's a good idea.

SENATOR PREISTER: Thank you.

SENATOR ERDMAN: Senator Kremer.

SENATOR KREMER: If someone saw a wild pig, would they, would you prefer that they would notify you before anything is done? Or is that the procedure then?

MARK BROHMAN: Yeah, except out in Seward County where we've got individual landowners that we know they're out there, we know the feral pigs are in that area. It's the same thing

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 8

LB 20

in Harlan County, in Richardson County. We will probably authorize as soon as this legislation and its companion pass. We'll probably authorize a couple of those landowners that we know what they're doing out there and they know what the feral hogs are, and there's no commercial operations immediately adjacent to them. We'll probably authorize them immediately to kill them. But we would like anyone else...and in the material we were passing out it says, please notify the commission and then we would authorize individuals after that point. But there will be some people authorized right away, that we know where they are at.

SENATOR KREMER: I was wondering if you could tell me why things that we don't want, animals, the weeds, that are, why they're so prolific and we have to struggle to make other things grow?

MARK BROHMAN: The things you don't want are very prolific, and the things you do want become endangered species, right? I guess mother nature has a strange way of doing things.

SENATOR ERDMAN: Any further questions for Mr. Brohman? Seeing none, thank you for your testimony.

MARK BROHMAN: Thank you.

SENATOR ERDMAN: Next individual wishing to testify in support of LB 20?

SENATOR KREMER: Senator Erdman, I failed to introduce David Soleheim, our page, and so he's to use for anything you ever want to pass out or hand out, so we appreciate that. And he's a student at UNL from Norfolk. Is that correct?

DAVID SOLEHEIM: That's right.

SENATOR KREMER: Okay.

ROD JOHNSON: (Exhibits 6-7) Mr. Chairman and members of the Ag Committee, it's a pleasure to come before you again this year. My name is Rod Johnson, executive director of the Nebraska Pork Producers Association, here to support LB 20 and the provisions to exempt feral swine from the estray requirements. The Game and Parks has done a good job of describing what the problem is in Nebraska at this point and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 9

LB 20

some of the issues that are out there. To quote the Lincoln Journal Star editorial recently, "Wild porkers are not really a joking matter." This is a situation that as I have brought this up to different people I have talked with, the first reaction is, you've got to be kidding me, this can't be something that we need to be concerned about. But the reality is we do have...we are in the infant stages of what could develop into a real problem, if we don't get it taken care of at this point. They have already talked about the disease situation and the destructive nature of these animals in a USDA brochure that I've got here to pass out to you. There's some results of some tests that were done in Georgia between 1991 and 1998. And out of 1,229 animals that were tested, 29 percent carried pseudorabies and another 3.8 percent carried swine brucellosis. We have spent a lot of time in Nebraska and across the nation eliminating the pseudorabies from the domestic herd. And what we don't need is a wild source running around Nebraska with a potential of moving this back into our domestic herd. One of my directors from the southeast part of Nebraska in the...just since Thanksgiving has had between his place, his brother's place, and a neighbor within a mile away, they have had at least three or four animals right up next to their hog facilities. So this is a situation that I think we need to take very seriously. The other thing that I think we need to address is the fact that the industry over the last few years has taken biosecurity very seriously as far as our industry is concerned to control the movement of diseases and the...to preserve the populations that we have. And I think it's very important that at this point we make sure that that integrity of our domestic herd is not challenged. The...in talking to my counterparts in several other states, the constant message is, make sure you eradicate the problem, don't let it get out of control. What we don't want to do is...have a situation where all of a sudden we have to manage it. And it's much better to control it, eradicate it at this point. My fear is that if we do not see some good results in the eradication of the problem right away, why we'll be back in front of the Legislature in a year or two asking for money to create a bigger campaign to go out there and eradicate the problem. So I think it's very important that we stress the need to eliminate the problem right now. With that I would be happy to answer any questions.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 10

LB 20

SENATOR ERDMAN: Thank you, Rod. Are there any questions for Mr. Johnson? Seeing none.

ROD JOHNSON: Thank you.

SENATOR ERDMAN: Thank you for your testimony. Next testifier in support of LB 20.

WESLEY SHEETS: Good afternoon, Chairman Erdman and Senator Kremer and the rest of the committee. My name is Wes Sheets, I live here in Lincoln, Nebraska. That's spelled S-h-e-e-t-s. I am here representing the Nebraska Division of the Izaak Walton League of America, with a bit of a different testimony and I intend to be very brief, of course. I've spent a career working with wildlife populations before I retired and I want to support the notion that LB 20 should be moved on to General File and passed. The situation of looming, what I would call a non-native indigenous problem pest species, would seem to be quite large. And I say that from a standpoint that I've had the opportunity to visit areas of southern United States, particularly in eastern Oklahoma and eastern Texas. And I've visually observed the tremendous destruction that these wild pigs can incur on the landscape. I've seen a number of agricultural crops totally destroyed, you know, and large acreages by some pretty large herds in eastern Oklahoma, but more importantly I'm concerned about the wildlife habitat and, of course, that's where the Izaak Walton League, being hunters and fishermen and those types of people would offer the support for LB 20. I guess I would just close real quickly and urge you to move this bill on the floor and assist the Game and Parks controlling what could very well become another one of these indigenous pests, similar to zebra mussels or purple loosestrife and a number of these other things that are looming out there that without natural ecological competitors, they seem to get out of hand and in very quick order. So we would urge you to move the bill. Thank you.

SENATOR ERDMAN: Thank you, Wes. Any questions for Mr. Sheets?

WESLEY SHEETS: Thank you very much.

SENATOR ERDMAN: Thank you for your testimony. Anyone else

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 11

LB 20

wishing to testify in support of LB 20?

JOHN HANSEN: Vice Chairman Erdman, members of the committee, for the record my name is John K. Hansen, H-a-n-s-e-n. I'm the president of the Nebraska Farmers Union. I appear before you today in support of LB 20. I would tell you that this is an interesting topic of conversation at some of our Farmers Union board meetings. And that the presidents of Oklahoma and Arkansas and Missouri and California do not consider this a joking matter at all and have been for the last several years talking about the problems that they have related with this, especially Arkansas and Missouri. And their advice and counsel to me has been to get on top of this as soon as you can and I was telling them that I had had some reports from our members, had two reports this year. One group of about 45 hogs were working an area and then the owner had no interest in recovering them or doing anything at all with them. During the course of the summer they were unsure of what their legal situations and status was, and so they had about 45 hogs working their cornfield, their irrigated cornfield all summer and fall. Until finally at the end of the season, when everything got combined, they actually had a roundup and were able to capture. But they were less than clear whether they could shoot them or what they could do with them, or how they would...but they were certainly out doing a very substantial amount of damage. So and ounce of prevention is worth a pound of cure. And would say thank you for bringing this bill forward and I think that it behooves us to get on top of this before it turns into a much more damaging and expensive problem that causes problems for wildlife, causes problems for farmers, and I guess that would conclude my comments.

SENATOR ERDMAN: Thank you, John. Any questions for Mr. Hansen? Seeing none, thank you for your testimony.

JOHN HANSEN: Thank you.

SENATOR ERDMAN: Anyone else wishing to testify in support of LB 20? Anyone wishing to testify in opposition of LB 20? Anybody wishing to testify neutral LB 20? Seeing none, Mr. Chairman, you are recognized to close.

SENATOR KREMER: I'll waive closing.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 12

LB 20, 52

SENATOR ERDMAN: Senator Kremer waives closing and that will close the hearing on LB 20. And I will turn the Chair back to Senator Kremer.

SENATOR KREMER: Thank you, Senator Erdman. The next bill is LB 52, we'll open the hearing on that. This bill was brought to us by the Public Service Commission, sort of a clean-up bill, some things that needed to be changed a little bit on LB 735, I believe, from a couple years ago. And Rick Leonard will introduce that bill.

LB 52

RICK LEONARD: Thank you, Senator Kremer, Chairman Kremer, members of the committee. I'm Rick Leonard, research analyst for the Agriculture Committee. LB 52 is a bill brought to us by, at the request of the Public Service Commission, largely to make clean-up changes in the grain laws following our passage of LB 735 enacted during the 2003 Session. LB 52 is identical to LB 946 which was heard before the committee last session and it advanced by the committee and that bill failed for lack of time. I'll just briefly go through the bill, section by section. Section 1 amends the statutory requirement for obtaining or maintaining licensure as a grain dealer by specifying credentials of persons who prepare financial statements filed annually with the commission. As amended such statements are to be prepared by an independent public accountant or independent certified public accountant, and in accordance with the accounting principles generally accepted. Section 2 revises rules for timeliness of action by sellers under 75-905 to have recourse to a dealer's bond or other security. Currently, as amended by LB 735, this section prescribes separate procedures and notification period when the seller delivers grain to a dealer or at the direction of a dealer in multiple shipments under one contract. LB 52 establishes a consistent rule applicable to all deliveries of, or transfers of possession to a dealer, whether single or multiple shipments. Section 3 amends 88-528 of the Grain Warehouse Act, by substituting a more correct terminology for the accounting standards to be utilized in the preparation of financial statements submitted by a warehouse license...licensees and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 13

LB 52

applications. ...This section is also amended to insert an overlooked harmonization when LB 735 was passed, that allows a parent company to submit an audit or a reviewed financial statement of the...on behalf of a fully-owned subsidiary. Section 4 amends 88-530.01 of the Grain Warehouse Act and this was a new section inserted by LB 735, corrects a drafting error that inadvertently included licensees who submitted audited annual financial statements within the requirement to submit an audited financial statement that may be imposed upon licensees who only submit, to submit only a reviewed annual financial statement. As you recall from that bill, the original LB 735 proposed that all licensees submit audited statements annually. This committee reached a compromise that said, you could continue to submit a reviewed financial statement if you were willing...but subjected to a little additional bonding, in the event you submitted only a reviewed statement. Section 5 amends 89-1,105 to authorize the commission to inspect for the accuracy of test weight readings of devices used to ascertain test weight and moisture. Currently, the commission is only explicitly authorized under statute to inspect for accuracy of moisture measurements. This section would become operative under a later section of the bill on January 1, 2006. The remainder of bill would become operative on its effective date. That's all I have.

SENATOR KREMER: Thank you, Rick. Any questions for Rick? If not, thank you and we ask the first proponent to please come forward. And you filled out a sign-in sheet already, or will?

JERRY VAP: I will.

SENATOR KREMER: You can wait till after your testimony, if you'd like.

JERRY VAP: (Exhibit 8) Good afternoon, Mr. Chairman and members of the committee. My name is Jerry Vap, and I'm the chairman of the Nebraska Public Service Commission. The commission supports LB 52 which Chairman Kremer was so kind to introduce on behalf of the commission. LB 52 is a clean-up bill which was previously introduced last year as LB 946. It ties up some loose ends left by LB 735, which was enacted in 2002. As you will recall, LB 735 was the result of a PSC initiated investigation into the level of

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 14

LB 52

protection available to owners and storers of grain. The commission's investigation resulted in the introduction, and ultimate passage, of several additional measures of protection. While LB 735 made significant improvements, a number of small issues were overlooked and need to be addressed. That's where LB 52 comes into play. LB 52 clarifies a number of accounting issues including who can prepare financial statements for submission to the commission, and under what accounting principles they must be prepared. The bill also allows grain dealers to submit reviewed financial statements instead of audited financial statements, which are more expensive. The commission may still require audited statements if circumstances warrant. In addition, LB 52 clarifies that a seller will not have recourse to a grain dealer's security unless the seller demands payment from the grain dealer within 30 days after the date of the last shipment of any contract. This language parallels other language contained elsewhere within the current statutes. We also made one small change in the area of moisture meters. The change allows the commission to inspect moisture meters for test weight as well as moisture content. Finally, during last year's hearing on LB 946, Robert Andersen, president of the Nebraska Cooperative Council, suggested a change to clarify whether the amount of grain sold, used to calculate the dealer bond requirement should be based on the grain dealer's fiscal year or on the commission's fiscal year. In order to address these concerns, we have added language to state that the calculation is based on the dealer's fiscal year. We hope that you will look favorably on these minor modifications and advance LB 52 as introduced. Be happy to respond to any questions.

SENATOR KREMER: Thank you, Jerry. Any questions of Mr. Vap? Senator Burling.

SENATOR BURLING: Thank you, Mr. Vap. Would you comment a little further on the problem of multiple deliveries of one contract and the solution that this brings?

JERRY VAP: Okay. What happens is you may sign a contract to deliver say 20,000 bushels of corn. It may take you 30 days to deliver that corn. If you are required to know, ask for payment...at the end of 30 days on that, from the first day of the contract, the minute you dropped your last

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 15

LB 52

bushels of corn, you would have to say I want my money and whatever the price is today. This allows for an additional 30 days beyond the date of last delivery, for you to exercise whatever terms you may have had in that contract for a price later or whatever you may want to do with that. But if you don't ask for your money within 30 days of the delivery of the last bushel on that contract, if there were a failure by that grain dealer and you hadn't asked for your money, then you would not have a claim against the grain dealer's bond. If you ask within 30 days of the last date of the delivery, or the last bushel being delivered, somewhere in there if you ask for your money and the dealer went bankrupt, you would have a claim against anything, against that bond for your share.

SENATOR BURLING: Thank you. But this doesn't change an option for a grain dealer to make other contract arrangements?

JERRY VAP: No. No, it just...it places the burden on the seller of the grain to ask for their money within 30 days, if they want to be protected by the grain dealer's bond.

SENATOR BURLING: I understand. Thank you.

SENATOR KREMER: Senator Erdman, do you have a question?

SENATOR ERDMAN: Yes, I do. Commissioner Vap, what...refresh my memory on the difference between the audited or the reviewed financial statement that could be...that's being proposed, what's the main difference between the two of them?

JERRY VAP: Well, an audited financial statement requires a full measurement of grain, and a complete audit of the assets of the...and bookkeeping of the elevator. A reviewed financial statement doesn't have a measure-up of the grain or inventory, is the main difference. It assumes that the grain dealer's records are accurate and the accountant attest to that.

SENATOR ERDMAN: Okay.

JERRY VAP: Now, under the current law, this doesn't change any if the financial statement that is offered under the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 16

LB 52

reviewed statement, does not come up to the standards required by the commission's rules. The commission then has the option to require an audit, a full-blown audit, even though it was presented as reviewed.

SENATOR ERDMAN: Then, you know, I just wanted to be refreshed, because I remember the discussion on LB 735, that we've also had a unfortunate circumstance with a neighboring state with Mountain State's Coop Commodities and how they handled their books and so I was just trying to examine how a situation like that may be treated under the change. The other questions I had, it authorizes the Public Service Commission to also do test weight examinations to ensure that that's accurate. Is that in addition to, I'm assuming the Department of Ag has that authority?

JERRY VAP: This is on the device that measures the moisture. We test those devices every year for everybody, everyone that uses those. This would also allow the commission to test that device for the test weight accuracy also.

SENATOR ERDMAN: Okay.

JERRY VAP: Is what it does.

SENATOR ERDMAN: Okay.

JERRY VAP: It wouldn't affect the Department of Ag.

SENATOR ERDMAN: Thank you.

SENATOR KREMER: I had a couple questions on the measuring device checking, is that...the fee be the same if you check for test weight as well as moisture or do you have to...

JERRY VAP: It would be. They would do that test at exactly the same time they're doing the moisture test.

SENATOR KREMER: So it would not be any more expensive?

JERRY VAP: It would just be one other function of the test.

SENATOR KREMER: Okay.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 17

LB 52

JERRY VAP: And at this time, there would be no change in the fee.

SENATOR KREMER: Just for my clarification on if a elevator would go bankrupt, say I took my last shipment in and then they declared bankruptcy five days after that, could I still ask for my grain after they'd filed for bankruptcy, if it's within that 30-day period or does it have to be before that would happen or...?

JERRY VAP: You...we're looking at it like...if they went bankrupt within five days of your completing your delivery, you would probably still have a claim there, even though you'll probably hadn't...

SENATOR KREMER: Okay, because you have a 30-day window...

JERRY VAP: You have a 30-day window.

SENATOR KREMER: ...to ask for it.

JERRY VAP: But if you waited past the 30 days...

SENATOR KREMER: Right.

JERRY VAP: ...then you probably would not have a claim.

SENATOR KREMER: Would that be automatic then, or would it...you'd have to file or ask for your...

JERRY VAP: I think you're still going to have to prove that you...the contract was for what period of time and...

SENATOR KREMER: Okay.

JERRY VAP: ...what you had...and how much you had delivered and...you'd still have to have all the documentation necessary to prove your claim.

SENATOR KREMER: So then a producer would have an advantage of waiting till the last shipment rather than the first because if it was the first 30 days, then it could be too late for anything on the first part of the shipment, is that true? Is that getting...a little technical, okay, okay.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 18

LB 52

JERRY VAP: Well, there...we might get into some technicalities here that would have to be thought out, and in the process we've gone through over the last couple of years here, we've looked at all kinds of scenarios and it's...(laugh)

SENATOR KREMER: You can't out...you can't out, you can't get ahead of everything.

JERRY VAP: ...you can get a headache very quickly trying to outwit everybody that might want to do something different.

SENATOR KREMER: Thank you. Senator Erdman has another question.

SENATOR ERDMAN: Commissioner Vap, just a clarification with the test weight machines that...the feedlot that I deliver to has one machine where you do the test weight, moisture, all that is done in one machine. Would that be the responsibility of the Public Service Commission, to provide the testing on that machine, or would there be a duplication of authority to test that if this would go forward?

JERRY VAP: I'm going to have to ask our grain department on whether we test...our manager. Mr. Fecht, do we test the moisture meters for...

SENATOR KREMER: He would, he'd have...

JERRY VAP: ...feedlots?

SENATOR KREMER: ...you need to come forward and state your name if you...so that it gets on the record for our transcribers if you'd have a question so...please come up...

JERRY VAP: John, could you come up?

SENATOR ERDMAN: ...or any warehouse...

JERRY VAP: Yeah...

SENATOR ERDMAN: ...because the machine that they use isn't obviously...especially to them, it's...

JERRY VAP: Well, we do what...we do the grain warehouses

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 19

LB 52

and several farmers that have moisture meters, but I'm not sure about feedlots. This is John Fecht, he is the director of the grain department for the Nebraska Public Service Commission.

SENATOR KREMER: Please spell your name too, so our transcribers can figure this out, so state your name.

JOHN FECHT: John Fecht, F-e-c-h-t.

SENATOR KREMER: Into the microphone, is where we need it really.

JOHN FECHT: F-e-c-h-t.

SENATOR KREMER: Thanks, John.

JOHN FECHT: Okay, Senator, to answer your question, the...our inspectors check moisture meters at feedlots as well as licensed grain dealers and warehousemen. I perform the same functions. Now you have got to understand, that some of the meters that are currently being used are grandfathered in, they don't have the capability of providing test weight. Only the new, NTEP-approved devices that have the newer technology have that ability, and that's been on these devices for several years now. And it gives a readout, but it's never been checked to make sure that it is an accurate device. There is procedures now available to do that, and with some rule making we can implement that in the course of our inspection of that meter. It wouldn't take that much longer to do and so, yeah, we would perform that. And the Department of Agriculture normally test the scales, doesn't want to get involved in this, this type of testing. It's something that we can handle and so there's no conflict.

SENATOR ERDMAN: So right now, there's no requirement that the test weight be examined, just the moisture. And so this would add that. So really, it's just adding to the Public Service Commission's authority and not addressing the Department of Ag's responsibility as far as weights and measures, and things like that.

JOHN FECHT: That's correct.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 20

LB 52

SENATOR ERDMAN: Okay. Thank you.

SENATOR KREMER: Thank you, John.

JOHN FECHT: Sure.

SENATOR KREMER: Any other questions? Thank you, Jerry.

JERRY VAP: Thank you.

SENATOR KREMER: Any other one wishing to testify as a proponent, please come forward. Anyone wishing to testify as an opponent? Neutral capacity?

ROBERT ANDERSEN: Senator Kremer, I'm Robert C. Andersen, A-n-d-e-r-s-e-n, and I'm here on behalf of the Cooperative Council today to testify in a neutral capacity on LB 52. Do want to compliment the commission on addressing the concerns that we had shared a year ago, concerning the fiscal year. But other than that we have no problems, and we have reviewed this bill in its entirety, so. Any questions?

SENATOR KREMER: Thank you, Bob. Could you fill out a sign-in sheet, please.

ROBERT ANDERSEN: I'm going to in a second.

SENATOR KREMER: Okay. Any questions for Bob? Seeing none, thank you. Next, in the neutral capacity?

PAT PTACEK: Yes, Senator Kremer, members of the Ag Committee, my name is Pat Ptacek, that's P-t-a-c-e-k, executive vice president of the Nebraska Grain and Feed Association, appearing in a neutral position on LB 52 today. We appreciate the commission's work on clarifying the audit versus review issue on dealers. We did strike the compromise during LB 735 on the warehouse side, where you were required to get an audit unless you filed additional security against your warehouse bond, in \$25,000 increments, I believe it was. And it also does have a safeguard there that...for noncompliance, the commission can step in and require audits of dealers, if they are chronically out of compliance. So with that, we look on a neutral position on this bill and look forward to working with the committee if there are any other questions or concerns.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 21

LB 52, 222

SENATOR KREMER: Thank you, Pat. Any questions? Seeing none, thank you. Anyone else wishing to testify in a neutral capacity? Seeing none, that will close the hearing on LB 52. And we will open the hearing on LB 222. Senator Fischer cannot be with us, so Senator Fischer's LA, I presume, will introduce the bill for us.

LB 222

DUSTIN VAUGHAN: (Exhibit 9) My name is Dustin Vaughan, I am the legislative aide for Senator Fischer, and unfortunately, Senator Fischer had a death in the family this week, this past week, so she could not be here. And she asked that I introduce the bill for her, LB 222. I have the proposed amendments...

SENATOR KREMER: He has some amendments to pass out there, so.

DUSTIN VAUGHAN: I'm here today to introduce LB 222 on the behalf of the Nebraska Cooperative Council. The bill's purpose is to remove the requirement of fingerprinting criminal history checks for applicants seeking a grain warehouse or grain dealer's license under the Nebraska Grain Warehouse Act or the Nebraska Grain Dealer Act. With the passage of LB 735 in 2003, those cooperative employees that also operate a convenience store, are required to be fingerprinted twice and that information cannot be shared. The Nebraska Liquor Control Commission requires fingerprinting for all those obtaining a liquor license. Although we do not have specific numbers of how many are affected by the standard of double fingerprinting, it is believed that over 30 cooperatives and their employees would be subject to these requirements. We are submitting an amendment to the original bill because the Nebraska Public Service Commission, who has the responsibility to regulate grain warehouses in the state, objected to the proposed language. After discussions with...between the PSC and attorneys for the Nebraska Cooperative Council, there's an agreement to the submitted language. Senator Fischer asks for your support to the amendment. The new language is similar to language that govern other state agencies that require criminal history checks for licensing purposes by

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 22

LB 222

allowing the agency to waive the fingerprinting and criminal history check if the applicant is licensed by the Nebraska Liquor Control Commission. Also the Department of Revenue may waive the requirements when licensing gaming and lottery operators. There will be representatives of the Nebraska Cooperative Council and the Public Service Commission to discuss the specifics and they will follow me. And thank you for your consideration. And Senator Fischer asks that you adopt the proposed language and advance LB 222 to the floor. And she has put, "I would be happy to answer any questions," but I don't know in my vast expertise of the last two weeks, if I'm ready to answer those. So I might defer to the gentlemen behind me that are going to testify.

SENATOR KREMER: Dustin, you did a good job. This would have been Senator Fischer's first bill...

DUSTIN VAUGHAN: Yeah.

SENATOR KREMER: ...as a senator, it got to be your...

DUSTIN VAUGHAN: Yeah, I lucked out, big time.

SENATOR KREMER: ...first bill, and so...you get initiated quickly. So you did a fine job.

DUSTIN VAUGHAN: Thank you. Thank you, Senator.

SENATOR KREMER: Thank you. We won't even ask you any questions...

DUSTIN VAUGHAN: That sounds excellent.

SENATOR KREMER: ...we'll let the people following you then. Okay. Anyone wishing to testify as a proponent, please come forward.

ROBERT ANDERSEN: (Exhibit 10) Senator Kremer, members of the Ag Committee, my name is Robert C. Andersen, that's A-n-d-e-r-s-e-n, I serve as president of the Nebraska Cooperative Council. We are a trade association, represent about 92 percent of the agriculture cooperatives throughout the state of Nebraska. I think Dustin did a very good job in terms of the explanation of the bill, it's a rather simple, straightforward bill. It has been, an amendment has

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 23

LB 222

been reached between the Public Service Commission and ourselves concerning some revised language. My statement goes into a little bit more detail in terms of the original issue, what have you. LB 735 is as presented to the Ag Committee, several years ago, at that time called for the fingerprinting. And to the best of my knowledge as I visit with people throughout the industry, at least in our association, and visiting with the legal counsel, it was our understanding that that fingerprinting proviso or would become effective as licenses were renewed, people came into the trade. It came as kind of a big surprise to us, as a trade association and others in the industry, where everybody were going to have to be fingerprinted at that point in time. We had quite a rush of people that had to go through this process of being fingerprinted. Having said that, the revised language there calls for the elimination of the dual fingerprinting. It is one of the primary concerns that we, the phone calls I took at that time, was for people who had C-Stores. We have a lot of cooperatives throughout the state that have C-Stores, as we try to provide services in those rural areas. They were being required to have to be fingerprinted twice. And it seems to me that it fails, what I call the common sense test, why do we have to have them fingerprinted twice? Why cannot agencies share this information among themselves there? So with that, the language has been presented to you and it has been purported to me that it has...meets with the approval of the Public Service Commission, as far as the amendment there, it will eliminate that dual proviso there. It seems to me that this is a step in the forward...going forward for us here, it eliminates and voids some costs and unnecessary taking of people's times, for going through that process here. So with that, I would encourage your support of the amendment as it's been revised and presented to you. I would welcome any questions you may have.

SENATOR KREMER: Okay. Thank you, Bob. Senator Cunningham.

SENATOR CUNNINGHAM: Yes. Bob, in the new language in the amendment, why then does it say "may waive" requirement rather than "shall waive?"

ROBERT ANDERSEN: I'll let our attorney go into that, I looked at that very same thing and I thought why not have "shall waive," for "may" but it's my understanding that it's

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 24

LB 222

more of a legal technicality. So I would ask that Rocky Weber go into that, in terms of the understanding with the existing statutes of that nature there. But it is my understanding, Senator, that is met with approval with the Public Service Commission's legal counsel, as well as ours, and should have the same net effect there. Again, the word "may" seems permissive, but I'll allow him to expound upon that. If he would follow me here, to the podium here. Any other questions?

SENATOR KREMER: Senator Burling.

SENATOR BURLING: Mr. Andersen, was there any talk about the, how current the criminal check was? In other words, supposing a person was subject to a criminal check previously, in his twenties or thirties, left that occupation or whatever, for another state or another job and then comes back. They had to be criminal checked again or because it was 20 years ago, it's still okay?

ROBERT ANDERSEN: Well, the way the law is now, anybody that...everybody that's involved within the trade center has had to be fingerprinted here. Anybody that wants to come in at this point in time, whether or not they have been involved in the trade before and left and come back, would have to be fingerprinted, as I understand it to be. So any new entrants into the profession, into the trade, would have to be fingerprinted.

SENATOR KREMER: Any other questions? Refresh my memory a little bit. When a person applies as a manager, they have to go through the criminal background check. Did last year, did every manager have to do that, even if they are existing for one time?

ROBERT ANDERSEN: It is a one-time fingerprinting in terms of...

SENATOR KREMER: Even existing managers are...but then from that point on then any time that you would hire a new manager, then they would go through the background check. And the amendment then says if they've already done it once, they do not have to be doing it again, because of a convenience store or something.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 25

LB 222

ROBERT ANDERSEN: Right. I think what you're asking is the people have already gone through that or they...is this going to be an annual event? The answer to that is no, it is people that come into the trades. So we've gone through the thrust of it here. But at this point in time, it is going forward in terms of void that dual fingerprinting.

SENATOR KREMER: As I was looking at the green copy here, it says that each applicant for the license, and each warehouse license, shall annually file an application with the commission, and then you...the background check in there...that doesn't have to do with the background check, that's an annually application for a license then, is that correct?

ROBERT ANDERSEN: Unless that has changed with the...what has been taking place, I would call on Rocky as he goes through that...the clarification.

SENATOR KREMER: But the criminal check would not be annually, after the one time...submitted that. Okay. Any other questions? Thank you, Bob.

ROBERT ANDERSEN: If I could, I'd like to call on Rocky to answer the Senator's question there on that word, "may," that permissive language, if possible, Senator?

SENATOR KREMER: Okay. And you'll need to fill out a sign-in sheet, also.

ROCKY WEBER: I will, Senator.

SENATOR KREMER: Sorry, if we...you probably knew that. We remind people quite often.

ROCKY WEBER: That's fine. Senator Kremer, members of the committee, my name is Rocky Weber. I'm an attorney with Crosby Guenzel LLP, here in Lincoln. Our office represents the Nebraska Cooperative Council.

SENATOR KREMER: And spell your name, please.

ROCKY WEBER: Weber, W-e-b-e-r. Senator Burling, I think you asked, or Senator Cunningham, maybe, about the language of "may" rather than "shall" waive the requirement. When we

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 26

LB 222

looked through, for other examples in state government, where fingerprinting is required for licensing applications, in the last several years, since 9-11, there have been innumerable bills and legislation adopted requiring fingerprinting requirements and background checks. The purpose of requiring the background check in this particular instance, is to see if there's any financial crimes in the applicant's history. And so we went to the Department of Revenue statutes and regulations and looked for similar legislation with regard to the gaming manager's license for lottery ticket operators, and for their agents to operate the lottery machines. And the enacting legislation for the Department of Revenue, in setting up that licensing process, uses this exact language: that if the applicant has been given a liquor license and went through the criminal background check with the Liquor Control Commission, that agency then, the Department of Revenue in that instance, may waive the requirement. I'm sure the industry would rather it be "shall" and would rather take the requirement out altogether, but in working with the Public Service Commission to address their concerns that they still be able to provide for background checks, this is the language that we agreed to because of the other examples that exist in state law.

SENATOR CUNNINGHAM: I guess I might ask the commission when they come up, just what kind of examples would they have that they might use the "may" rather than the "shall."

ROCKY WEBER: Okay. I think the other question, Senator Kremer, I think you were asking about whether or not annually this fingerprinting requirement would be required, even after the first year that they had to do that. The language of LB 735 specifically went on to say that once the primary individual for the grain elevator had went through the background check once, upon subsequent license applications, they would not have to do another background check. But if a new manager were hired and became the primary person responsible for the activities, then they would have to go through again, an initial criminal background check and fingerprinting requirement.

SENATOR KREMER: That's the way I understood it, too. And then when I read this, why it looked like an annual filing fee and the background check, almost, but it must have been

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 27

LB 222

spelled out different somewhat later on in LB 735.

ROCKY WEBER: Right. And again, I think that any time a new manager comes in, typically we're going to have a duplicative process. They are going to have to get a fingerprinted and a background check for the liquor license, at that point also. Because when that primary person changes, it requires a new background check there as well.

SENATOR KREMER: Okay. Thank you, Rocky. Anyone else wishing to testify as a proponent?

PAT PTACEK: Yes. Chairman Kremer, members of the Ag Committee, again my name is Pat Ptacek, P-t-a-c-e-k, executive vice president of the Nebraska Grain and Feed Association, appearing today in support of LB 222. That was, of course, one of the issues that was raised in LB 735 and maybe had that been in a law prior to LB 735, we might not have needed LB 735, because of an unfortunate situation. And I will echo also, on Mr. Andersen's comments in regard to, I think that when we looked at that legislation under LB 735, and in particular the background check, I will admit that I made the mistake, I certainly did, thinking that from this day forward those background checks for any new manager would have been necessary and not for existing managers. However, that was not the case, it was a one time, of course, for all existing managers and anyone entering the profession, to go through that fingerprinting check. Certainly, while the majority of the dual fingerprinting requirements fell upon cooperative managers, there are a number of private elevators that also own C-Stores, and that were also subject to the dual fingerprinting requirement. So I do believe, that this is just a common-sense approach that we need to press forward. We're certainly agreeable to the proposed amendment on this as well. And with that, we look forward to working with you in passing LB 222 as amended.

SENATOR KREMER: Thank you, Pat. Any questions? Seeing none, thank you.

PAT PTACEK: Thank you.

SENATOR KREMER: Next proponent, please. Anyone wishing to testify as an opponent?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 28

LB 222

JERRY VAP: (Exhibit 11) Good afternoon, again, Mr. Chairman and members of the committee. My name is Jerry Vap, that's spelled V-a-p, and I am the chairman of the Nebraska Public Service Commission. The commission opposes LB 222 as introduced, so we're kind of in a position of for and against, or against and a for. LB 222 would eliminate the fingerprinting and criminal background check requirements for both grain dealer and grain warehouse licensees. The commission considers these license requirements essential for the protection of producers in Nebraska. This requirement was put in to place just two years ago as part of LB 735. The commission realized the need for criminal background checks during our handling of the Atlanta elevator failure, which resulted in significant losses to the farming community. It is no exaggeration to say that a background check in that instance probably would have saved millions of dollars. To completely eliminate this requirement would be a risky proposition. The Nebraska Cooperative Council has proposed an amendment to the bill, which we've had a chance to review, and rather than eliminating a background check entirely, the amendment would allow the commission to waive the requirement if the licensee has already undergone a background check for the purposes of obtaining a liquor license and has received that license. This license already requires fingerprinting and a criminal background check. In issuing this license, the Liquor Control Commission would share the same concern to protect the public from dishonest operators. The commission supports this amendment and commits to making rules and regulations to carry out such discretion. We hope that you consider the significant risk posed to the producers in Nebraska in enacting LB 222 as introduced. If LB 222 is changed, as I have discussed, the commission would not oppose the amended bill and would be happy to respond to any questions at this time.

SENATOR KREMER: Okay. Thank you, Jerry. Senator Cunningham.

SENATOR CUNNINGHAM: Jerry, maybe you could answer my question.

JERRY VAP: I've been trying to think of a good example since you brought that up. An example might be...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 29

LB 222

convenience store operator who has the liquor license, becomes the manager of the grain operation also. And they might have been checked five, ten years earlier. And someone may or may not object to that person being the manager. They may bring forth evidence that they feel is detrimental to that person becoming the manager and would be proven up in a background check, is the only...one of the few instances we probably could think of. But in most cases, I would see very little need to require the second.

SENATOR CUNNINGHAM: So it's pretty much just an issue of time frame, that it could have been some time back?

JERRY VAP: Yeah. It could have been, yeah.

SENATOR CUNNINGHAM: And you don't, for the most part you don't see a problem.

JERRY VAP: I don't anticipate the commission saying, we're going to be ornery here and require it for everybody, we aren't going to do that. It would...first of all, we have had several instances over the past year where...and I mean by several, probably 30 or 40 different individuals who submitted their fingerprints not once, but twice and in some cases three times, before a legible set could finally be run through the State Patrol's nationwide background check, and prove it up. A lot of them are returned saying, we can't read these. And it wasn't the fault of the individual, whoever was doing the fingerprinting just didn't do a good job and, frankly, the commission and the individuals got very frustrated over the process. So we aren't anxious to make people go through it any more than we have to.

SENATOR CUNNINGHAM: Okay. Thank you.

SENATOR KREMER: Any other questions? Would you oppose amending LB 222 as amended into LB 52? LB 52 was kind of a clean up for LB 735, and this is the...

JERRY VAP: No. If you could do that...

SENATOR KREMER: ...kind of the same...the same thing.

JERRY VAP: ...amend LB 222 as...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 30

LB 222, 51

SENATOR KREMER: As amended...

JERRY VAP: ...as we've been talking about.

SENATOR KREMER: Right.

JERRY VAP: And then to amend it into LB 52.

SENATOR KREMER: LB 52.

JERRY VAP: I think it would work just fine.

SENATOR KREMER: It seems to fit into the same...

JERRY VAP: It fits right into the clean-up part of the bill.

SENATOR KREMER: ...yeah, okay.

JERRY VAP: Of LB 735. And it would certainly be better than trying to run two bills and wasting...or taking up a lot of time.

SENATOR KREMER: I said as amended, but as a proposed amendment is what I should have said...because...

JERRY VAP: Yeah, um-hum.

SENATOR KREMER: Okay. Any other questions? Thank you, Jerry, I appreciate it.

JERRY VAP: Thank you.

SENATOR KREMER: Anyone else wishing to testify in opposition? Anyone who wishes to testify in a neutral capacity? Seeing none, that will close the hearing on LB 222. And we will open the hearing on LB 51. It's a bill brought to us by the Department of Agriculture regarding their laboratory testing services and Rick Leonard will introduce that bill for us.

LB 51

RICK LEONARD: Thank you, Chairman Kremer and members of the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 31

LB 51

committee, again, my name is Rick Leonard, research analyst for the Agriculture Committee. And that's spelled, L-e-o-n-a-r-d. As Senator Kremer mentioned, LB 51 is brought to us at the request of the Department of Agriculture. LB 51 would specifically or expressly authorize the department to perform laboratory testing services requested by state, local, and federal government entities or associations having governmental entities in their membership, in this state...whether those are from this state or other states. The department is directed to establish a system of billing and fees that as closely as practical recovers the actual cost of performing the service. The Agricultural Laboratory Testing Services Cash Fund is created to receive payments for services performed under the authority of the bill. Only those testing services that relate to testing functions currently carried out by the department in association with the department's existing duties, statutory authorities may be performed for hire as authorized by this bill. The purpose of LB 51 is to grant specific authorization for the department to make its laboratory facilities available in...as in one example, in the event of a surge of testing associated with a disease, for example, a disease occurrence that may overwhelm laboratories resources of other states or other governmental entities. In effect, we are enabling the department to cooperate. This would be...enable the department to cooperate within interstate and intrastate partnerships to pool laboratory resources, to assure sufficient laboratory capacity is available to respond to a disease occurrence. And the bill has a further purpose of authorizing the department to perform analytical method verifications for testing use by other entities or associations that have testing elements of the regulatory...within the regulatory or certification programs. That's the gist of it. I'd take any questions if there is any.

SENATOR KREMER: Okay. Any questions of Rick? Seeing none, thank you. Ask the first proponent to please come forward. Welcome, Mr. Carlson.

MERLYN CARLSON: (Exhibit 12) Thank you. May I introduce myself, I'm Merlyn Carlson, C-a-r-l-s-o-n, and Merlyn, M-e-r-l-y-n, and I'm director of the Department of Agriculture. I'm here to testify in favor of LB 51 and let me thank you, Senator Kremer, for introducing the bill. I'd

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 32

LB 51

like to also introduce Tom Jensen, who is the administrator of our laboratory division, to answer any technical questions and would ask that that written testimony be placed into the record for the bill. And as Mr. Leonard indicated, the purpose of LB 51 is to provide the Department of Agriculture's laboratory division the authority to test samples for other governmental entities and associations with other government entities who are members. It's also to provide authority to charge actual cost in order to reimburse the state's expenses. And for your understanding, currently the agriculture laboratory division of the Department of Agriculture does testing for the department's regulatory work, an example: the testing of commercial feed and commercial fertilizer, agriculture seeds, milk, and food products and has the authority to charge others for testing of seed samples under the Nebraska Seed Law. This legislation was initiated for two reasons. The laboratory division seeks to extend its authority for its laboratory staff to perform analytical testing services for other governmental entities and associations and with those governmental entities that are members. And if the laboratory division is allowed to charge for such testing services and to accept payment for cost incurred, the Department of Agriculture will be reimbursed for those expenses. So specifically, the legislation allows the laboratory division to perform testing for other governmental entities, this would allow, for example, the laboratory to test food samples in the event of a regional or a national emergency involving the food supply. And recently, the Department of Agriculture's laboratory became involved with a national network of governmental laboratories called the Food Emergency Response Network, or an acronym of FERN. FERN consists of state and federal laboratories which might be called upon to test samples in a national emergency. And the legislation allows the laboratory division to perform methods of validation work for associations with governmental entities as members. And, for example, a laboratory division may perform testing for the Association of Official Analytical Chemists research institute in its effort to validate any new tests. And the legislation is permissive in nature rather than mandatory, so the Department of Agriculture would determine whether or not it should conduct the analytical work based on the need. And this testing would be limited to that which relates to the Department of Agriculture's jurisdiction. And so with

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 33

LB 51

this in mind, and the testimony that has been submitted, we'd ask for your support in enacting the bill and ask for any questions before I say thank you.

SENATOR KREMER: Okay. Any questions for Mr. Carlson? Do you have quite a few requests at this time, or is this just anticipation that should there be a...okay.

MERLYN CARLSON: May I refer to Tom Jensen, who is administrator and...

SENATOR KREMER: That would be fine, sure. If you would state your name and spell your name, not for our sake but those who have to read the transcripts, so that they know.

TOM JENSEN: Senator Kremer, committee members, my name is Tom Jensen, J-e-n-s-e-n, I am the laboratory administrator for the Nebraska Department of Agriculture. In answer to your question, no we have not received any requests for this service, it's primarily in preparatory as part of our planning process for a national emergency in the food sector should something come along.

SENATOR KREMER: Okay. Do you request, do you receive requests from any other states at the present time or this would just be anticipating that something like that, too, that if you're overwhelmed that you could go to another state and also ask for the same ability to...

TOM JENSEN: That is correct, that is the current national thinking that laboratories will help each other out, either interstate or intrastate. For instance, Dr. Steffen is here from the University Veterinary Diagnostic Laboratory. We have formed a group of public laboratories throughout the state, the human side through the medical center, the animal side through the veterinary diagnostic center, our own laboratory and the Health and Human Services water laboratory to form a community of public laboratories that would be responsive to an emergency, each handling their own samples as best they can, but seeking help and giving help where necessary.

SENATOR KREMER: Okay.

TOM JENSEN: If called upon.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 34

LB 51

SENATOR KREMER: This bill would give you the ability to charge someone else, do you have...is it the structure that where someone else would ask you or that you would ask someone else for their service that you would have the money to pay for that, or how would that work? Say you were overwhelmed with laboratory testing that you called in someone else, would this cash fund, would it be paid for out of that or...this also establishes a cash fund?

TOM JENSEN: The cash fund only reimburses our laboratory for the cost incurred in our testing.

SENATOR KREMER: What would happen if it was the other way around?

TOM JENSEN: Yes, I understand...I'm trying to come up with a good answer (laugh). In a national emergency, I guess a similar instance would be indemnification that would be provided through the United States Department of Agriculture for animals lost. Producers would be paid for the cost of those animals. If this was truly a national emergency, there would be the expectation that there would be a remuneration of expenses to pay for those costs through the federal government, USDA, through FDA, through emergency management, maybe even FEMA. That's just an expectation theory on my part.

SENATOR KREMER: Okay. Okay, again I'm just thinking of if you are overwhelmed, where would you come up with the funds to pay for that, is that a problem or is that...?

TOM JENSEN: It would be certainly.

SENATOR KREMER: Okay.

TOM JENSEN: We would be limited by our budget unless an emergency was declared. Our first response would be to try to come up with the resources within our laboratory, pull staff from other sections of the laboratory to help out with the emergency area. Depending on the extent of the situation then we would have to do as you suggest, seek sources outside the department and then that would be an issue, yes.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 35

LB 51

SENATOR KREMER: Because if every other state is in the same position, then when you ask them for their...when they come to you for services and they don't have a way to pay you, well then you're in the same position as what you might be here then.

TOM JENSEN: Yes, absolutely. We would have to hope that money would come from another government entity, probably a national government agency. Very good questions.

SENATOR KREMER: Okay. Thank you. Any other questions? Senator Wehrbein.

SENATOR WEHRBEIN: You don't do the BSE test right in your...

TOM JENSEN: No, we do not.

SENATOR WEHRBEIN: ...but if there was a need for that, do you...does that go through you or do the feds go right to, I think there's another laboratory in Lincoln, right? That does that? I just was wondering about the mechanics. It isn't directly related to this but I was...

TOM JENSEN: Dr. Steffen may be able to answer this question. Would you, can you answer this question? I'm going to yield for...

SENATOR KREMER: State your name and spell it also.

DAVID STEFFEN: I'm David Steffen, S-t-e-f-f-e-n. I'm director of the Veterinary Diagnostic Lab for the University of Nebraska. And as far as the prion testing in Nebraska, we're currently the only ones doing testing for prions, we don't handle the BSE. Those contracts were awarded by the USDA and we didn't have the physical plant to handle those samples with the biosafety concerns, as that's a human pathogen, so.

SENATOR WEHRBEIN: So they would come direct to you rather than going to the state laboratory, they would know to go right to you, is what I'm saying? So this would not be a state laboratory problem if that, if there was a suspected case, is that...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 36

LB 51

DAVID STEFFEN: Yeah, I guess right now if it was a suspected case of BSE it would go to one of the several states that have a contract with the USDA or else it would go to the lab facility in Ames, Iowa.

SENATOR WEHRBEIN: So it isn't really a state problem, at this point, which is what I was after? Yeah.

DAVID STEFFEN: No.

SENATOR KREMER: Thank you.

DAVID STEFFEN: There is...

MERLYN CARLSON: I might add a little bit to that. Senator Wehrbein, Merlyn Carlson, C-a-r-l-s-o-n. My understanding there would be two rapid tests that would be done in a laboratory that is authorized to do the rapid test, if they were both inconclusive, positive, and not the IHC test then would be run, at the National Animal Disease Laboratory in Ames, Iowa, or CDC in Atlanta.

SENATOR KREMER: Okay.

TOM JENSEN: Your question points out...

SENATOR KREMER: State your name again each time you talk so we know who it is.

TOM JENSEN: It's Tom Jensen, J-e-n-s-e-n.

SENATOR KREMER: You don't have to spell it, just state it.

TOM JENSEN: Your question points out a concern having to do with to what extent we become involved with this testing. Understanding the equipment that's involved with some of the testing we would not enter into an agreement to do this unless we did have the capabilities, both analyst training, certification if necessary, and the proper equipment. In this particular case we would have neither, so we would not be able to do the testing. And that's part of the reason for the permissive nature, so that we would be able to make the decision on which samples to test, depending on our capabilities.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 37

LB 51

SENATOR WEHRBEIN: And my history says that's important because I mean it's possible to have operators come into the laboratory that will be aggressive and want to take on something they can't take on. And I think, that's important that we don't get to spending more money than we have...I mean, getting the equipment that doesn't necessarily fit. So I appreciate your answer.

TOM JENSEN: Yes, and we would not be able to do that anyway because we wouldn't have the budget for that...

SENATOR WEHRBEIN: Right.

TOM JENSEN: ...specific equipment anyway, so we'd be...

SENATOR WEHRBEIN: Yeah.

MERLYN CARLSON: You wouldn't have to worry about that one, Senator.

SENATOR KREMER: Thank you. Any other questions? Seeing none, thank you very much.

MERLYN CARLSON: Well, thank you.

SENATOR KREMER: Anyone else wishing to testify as a proponent?

DAVID STEFFEN: I'm David Steffen again, director of the Veterinary Diagnostic Center and I'd like to thank you for giving me a chance to testify, Senators. I'm supportive of this bill, I think it offers a unique opportunity. I haven't, you know, Tom said earlier he wasn't approached about requests for testing. I've certainly worked with him on this public labs group to respond to bioterrorism or some kind of ag emergency crisis, and I think there's a lot of creative things we'll do where we might be jumping into substrates we're not used to working with, sharing the equipment and the expertise. So even though our missions overlap quite a bit between the Department of Ag lab and the university laboratory, with the public health lab the missions are quite different. But a lot of the technology expertise, the human and the physical capital that are there, overlap. And it's good to have a structure that we can take advantage of. I see other opportunities with the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 38

LB 51

Department of Ag lab has, some, particularly clinical chemistry testing capability that we lack in our facility. And if they had an opportunity to charge for fees, we may be able to strike some agreements that we could actually offer some testing in Nebraska on a limited basis, that would benefit the livestock community. So I think overall that's a pretty good deal. As far as testing for other agencies, you know, talking about the mad cow thing, I would hope they wouldn't get into that. We have all the equipment and expertise and training, we do all the prion work for deer in Nebraska and most of the work for Arizona, currently. But I think there's a lot of ways we can cooperate and that this would certainly open the door to some discussions about sharing testing resources.

SENATOR KREMER: Senator Wehrbein.

SENATOR WEHRBEIN: That does raise a question now like with Arizona. You have an agreement with them, do they pay you or does that come through federal funds?

DAVID STEFFEN: Right now we have an agreement with Arizona to...we run all of their prion samples from their elk and deer that were harvested this year. And I believe they may actually be getting the funds on a federal grant, but we're billing the state of Arizona.

SENATOR WEHRBEIN: Do you have a fee schedule with them, with your agreement?

DAVID STEFFEN: Yes, we do.

SENATOR KREMER: Any other questions? I think it makes sense to be as efficient as possible, and to not have a lot of overlaps in this day and age, with short of funds all the time. And I think also, I'd like to commend the department for being proactive and not waiting till something happened and then trying to react to it. And so it's very good to be ready, even though we haven't had a lot of incidents of that. Senator Wehrbein, do you have a...

SENATOR WEHRBEIN: I know it's a little unusual, I don't know if there's any opposition.

SENATOR KREMER: We'll see.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 39

LB 51

SENATOR WEHRBEIN: Is the private laboratories bothered by this? I mean is this...

SENATOR KREMER: Private laboratories have concerns about being done at the university or the department?

DAVID STEFFEN: I guess as far as the university, when we look at it, who can bring in samples. The fact that it's with other government agencies, I think would restrict, at least my concern as the director of the university lab, that they aren't going to be getting into the turf that we serve a lot of private individual livestock producers and veterinarians. So I think the fact that it's a government contract and that they actually have to cover their cost, I think is another big issue if they are charging enough to cover the cost then they aren't really unfairly competing with the private laboratory.

SENATOR WEHRBEIN: Okay. Thank you.

SENATOR KREMER: Thank you. Other proponents or further comments? State your name again.

TOM JENSEN: Yes, Tom Jensen. We administer of the Nebraska Soil and Plant Analysis Laboratory Act. And because of that we have frequent contact with all the private soil laboratories. I don't know if there might be other private laboratories that would be affected, but I'm certainly knowledgeable of the soil laboratories which also do agronomic testing, some of the same testing that we do. And I'm very aware of their concerns about our department becoming involved with setting up a fee structure to test samples for citizens that they would be doing as part of their business. And they would not like that. In this bill as it's presented, it specifically does not include testing for, excuse me, it specifically includes testing for other government entities and that's the reason why we wanted to put that in there so that they, the private testing laboratories would not be uncomfortable with this bill. Were we to start testing for private entities, they would have an issue with that. At least they have in the past, and I assume they would now. Some states are set up to do work, such as in the Veterinary Diagnostic Center with a fee structure and through their university system, and we're not

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
January 18, 2005
Page 40

LB 51

set up that way. So it would not be something we intend to do at all.

SENATOR WEHRBEIN: I can easily imagine this question come up on the floor, is kind of the reason I was asking it. Thank you.

TOM JENSEN: Thank you.

SENATOR KREMER: Thank you very much. Anyone else wishing to testify as a proponent?

JOHN HANSEN: Mr. Chairman, for the record my name is John K. Hansen, H-a-n-s-e-n, president of the Nebraska Farmers Union and I appear before you today as a president and lobbyist. And this seems like a very cost effective and reasonable way to expand the total amount of capacity, in the system, should a crisis arise. And that given the events of recent years, it's a good thing to proactively think about how we would be able to do that. And so it seems to me to be a very appropriate and constructive way to proceed. And we see no downside. And we see only the opportunity to respond in the unfortunate event that we would need to. Thank you.

SENATOR KREMER: Thank you, John. Any questions? Seeing none, thank you. Anyone else wishing to testify as a proponent? As an opponent? Anyone wish to testify in a neutral capacity? Seeing none, no closing or anything, I guess not. That would end the hearing on LB 51. And thank you very much for bringing this before us. And that ends the hearings for today. We can't promise to be this quick every hearing, but then it's good.